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# **Federal Budget Process Reform: Analysis of Five Reform Issues**

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## Federal Budget Process Reform: Analysis of Five Reform Issues

This report examines several budget process reform options that have received prominent congressional consideration in recent years: an extension of the Budget Enforcement Act; a joint budget resolution; an emergency reserve fund; an automatic continuing resolution; and biennial budgeting. For each reform option, the analysis includes a summary of the procedural issues related to the reform option, the arguments that have been raised for and against the proposal, and the legislative history of past proposals.

First, key enforcement procedures under the Budget Enforcement Act (BEA) of 1990 expire at the end of FY2002 (i.e., September 30, 2002). These include the statutory caps on discretionary spending and the “pay-as-you-go” (PAYGO) requirement for direct spending and revenue legislation. Possible considerations related to an extension of these budget enforcement procedures include the time frame covered, possible categories for caps on discretionary spending, the types of automatic or permissible adjustments to the caps, and the application of the PAYGO requirement.

Second, a joint budget resolution would require the President’s signature, thereby formally and directly involving the President in congressional deliberations on the budget early in the process. Under the existing budget process, there is a concurrent resolution on the budget that represents an agreement between the House and Senate concerning overall budget policy. It is not presented to the President for his signature, and thus does not become law.

Third, proposals for an emergency reserve fund are intended to change the way Congress and the President budget for emergencies and other unanticipated situations. Instead of appropriating funds for such situations as the need arises, emergency reserve fund proposals would require Congress and the President to set aside money for such purposes in the budget, with the appropriation of such funds tied to meeting specific criteria of what constitutes an emergency.

Fourth, an automatic continuing resolution would provide an automatic source of funding for discretionary activities in the event one or more regular appropriations acts are not enacted by the start of a new fiscal year. This reform proposal is intended to prevent a shutdown of the federal government due to the expiration of funding.

Finally, biennial budgeting proposals would change the budget cycle to 2 years from one year. This reform has been discussed as a way of promoting better management of both Congress’s and the administration’s budgetary workload. Biennial budgeting proposals could involve multiyear authorizations, 2-year budget resolutions, 2-year appropriations, or some combination of the three.

This report will be updated to reflect changes in congressional concerns or actions.

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# Federal Budget Process Reform: Analysis of Five Reform Issues

## Introduction

The budget has become a central issue in American politics because it reflects decisions concerning how big the federal government should be and priorities for what the government should do. How those decisions should be made, by whom and under what constraints has also become a part of the modern political dialog. Although the basic framework for budgeting has remained relatively stable in recent years, there has been a recurring reexamination of the budget process to determine if it works to meet the changing demands of government.<sup>1</sup>

In an earlier era of government reform, William F. Willoughby, the director of the Institute for Government Research, wrote that:

Among the specific problems of public administration none exceeds in importance that of the establishment of an orderly and efficient system for the handling of the financial affairs of the government.<sup>2</sup>

Arguably, this is no less true today than it was then, and its salience is illustrated by the number and variety of proposals made to change one or more aspects of the budget process in recent years.

This report includes five reform issues on which Congress has consistently demonstrated a high level of interest, focused on specifically defined reform proposals. Some of these issues, such as biennial budgeting, have extensive legislative histories. These proposals represent just a part of the total spectrum of proposals that have been discussed, both inside and outside of Congress. This report does not include those reform issues that are primarily conceptual in nature. Such issues reflect a level of dissatisfaction with the current process, but they generally are not focused on a specific single reform option. Examples of these include:

- *authorization/appropriations issues*, which concern the relationship between authorizations and appropriations, including timing and sequencing issues;

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<sup>1</sup> For a brief summary of the evolution of the budget process, see U.S. Congress, Joint Committee on the Organization of Congress, *Organization of the Congress*, 103<sup>rd</sup> Cong., 1<sup>st</sup> sess., H.Rept. 103-413, vol. 2 / S.Rept. 103-215, vol. 2 (Washington: GPO, 1993), pp. 109-114.

<sup>2</sup> William F. Willoughby, *The National Budget System* (Baltimore: Johns Hopkins University Press, 1927), p. 1.

- *reconciliation process issues*, which concern the amount of time available for considering reconciliation bills, the specificity allowed for reconciliation instructions, whether reconciliation may be used only to create budgetary savings, and the application of the Byrd Rule prohibiting extraneous provisions in reconciliation bills in the Senate;
- *impoundment reform issues*, which concern amended deferral rules or an expedited rescission process; and
- *budget presentation and structure issues*, which concern separate presentations for regulatory, capital, or tax expenditure budgets, as well as other issues related to the timing or contents of the President's budget or mid-session review.

This report also does not include proposals to reform the budgetary mechanisms for specific programs, such as instituting off-budget status for trust funds or establishing a lock-box mechanism as part of Social Security and Medicare reform proposals.

Finally, this report does not include reform proposals based on amending the U.S. Constitution, such as presidential item veto authority, a limitation on the authority of the federal government to raise taxes, or a balanced budget requirement.<sup>3</sup>

For a more comprehensive accounting of current budget process reform measures and their legislative history, see CRS Report RL31479, *Federal Budget Process Reform: Proposals and Legislative Actions in the 107<sup>th</sup> Congress*, by Bill Heniff Jr.

## The Basic Framework of the Budget Process

Although the Constitution requires that "All Bills for raising Revenue shall originate in the House of Representatives," it is otherwise silent regarding specific guidelines for the consideration of revenue or spending legislation.<sup>4</sup> The Constitution, however, does provide Congress authority "To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States"<sup>5</sup> and requires that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."<sup>6</sup> Through these provisions, the Constitution grants Congress the "power of the purse."

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<sup>3</sup> For more on these issues, see CRS Issue Brief IB89148, *Item Veto and Expanded Impoundment Proposals*, by Virginia A. McMurtry; CRS Report 97-379, *A Balanced Budget Constitutional Amendment: Background and Congressional Options*, by James V. Saturno; and CRS Report 98-368, *A Tax Limitation Constitutional Amendment: Issues and Options Concerning a Super-Majority Requirement*, by James V. Saturno.

<sup>4</sup> Article I, section 7.

<sup>5</sup> Article I, section 8.

<sup>6</sup> Article I, section 9.

This general authority has been subsequently fleshed out through a number of laws and congressional rules that underpin the federal budget process.<sup>7</sup> Two statutes in particular provide much of the basic legal framework.

The first key statute is the Budget and Accounting Act of 1921 (P.L. 13, 67<sup>th</sup> Congress, 42 Stat. 20-27). Now codified in title 31 of the *United States Code*, this Act established the statutory basis for an executive budget process. It gives the President responsibility for submitting to Congress a proposed budget for the entire federal government at the beginning of each year. It also created the Bureau of the Budget (reorganized as the Office of Management and Budget (OMB) in 1970) to assist him in carrying out his responsibilities, and the General Accounting Office (GAO) to assist Congress as the principal auditing agency of the federal government.

The second key statute is the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344, 88 Stat. 297-339). The provisions of this Act have been modified on a number of occasions, but it remains the statutory basis for the congressional budget process. The Act provides for the annual adoption of a concurrent resolution on the budget as a mechanism for coordinating and facilitating congressional budgetary decision making. It also established the House and Senate Budget Committees with jurisdiction over the annual budget resolution, and created the Congressional Budget Office (CBO) to provide budgetary information and analysis to Congress independent of the executive branch.

In addition, the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (Title II of P.L. 99-177, 99 Stat. 1038-1101), has had significant impact on budgetary procedures and outcomes by creating additional control mechanisms. This Act established the sequester mechanism as a means to enforce statutory budget requirements. Currently, there are separate mechanisms to control direct spending and revenues (the pay-as-you-go, or PAYGO, process) and discretionary spending (spending caps).<sup>8</sup> The budgetary impact of all legislation is scored by OMB, and reported three times each year (a preview with the President's budget submission, an update with the mid-session review of the budget, and a final report within 15 days after Congress adjourns). If the final report for either the PAYGO or spending caps indicates that the statutory requirements of that mechanism have been breached, the President is required to issue an order making across-the-board cuts of nonexempt spending programs subject to that control mechanism.

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<sup>7</sup> For more on the budget process, see CRS Report 98-720, *Manual on the Federal Budget Process*, by Robert Keith and Allen Schick, and CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith and Allen Schick. For more information on specific aspects of the budget process, see the fact sheets on the CRS Web site at [<http://www.crs.gov/products/guides/budget/explanations/BudgetExplanations.shtml>].

<sup>8</sup> The Balanced Budget and Emergency Deficit Control Act of 1985 was amended to include these mechanisms by the Budget Enforcement Act of 1990 (Title XIII of P.L. 101-508, Omnibus Budget Reconciliation Act of 1990, 104 Stat. 1388-573-1388-630). Originally enacted with a sunset date of FY1995, they have been extended twice, through FY1998 (Title XIV of P.L. 103-66, Omnibus Budget Reconciliation Act of 1993, 107 Stat. 683-685) and through FY2002 (Budget Enforcement Act of 1997, Title X of P.L. 105-33, Balanced Budget Act of 1997, 111 Stat. 677-712).

## The Budget Cycle

The President is required to submit to Congress a proposed budget by the first Monday in February. Although this budget does not have the force of law, it is a comprehensive examination of federal revenues and spending, including any initiatives recommended by the President, and is the start of extensive interaction with Congress.

The President's budget submission is itself the result of a process that typically began 10 months earlier. During this stage, federal agencies prepare budget requests under a variety of internal procedures. OMB plays a coordinating role in this process through communications, circulars, and bulletins providing instructions, schedules, and other materials to ensure that budget requests adhere to standardized conventions and formats.

Agency budget requests are subsequently reviewed by OMB, and the agencies notified of the OMB director's recommendations for changes through a "passback" in the fall prior to the President's submission. Agencies may appeal these recommendations to the director, and in some cases, directly to the President. Once final decisions on the budget requests are made, agencies revise their requests accordingly, and prepare supporting materials for inclusion in the President's budget submission.

The President's budget submission does not complete administration action. Agency officials testify at congressional hearings and provide written budget justifications. In addition, the President is required to submit a formal mid-session review of the budget by July 15 of each year,<sup>9</sup> and may also submit additional budgetary requests during the year.

Within 6 weeks of the President's budget submission, congressional committees are required to submit their "views and estimates" of spending and revenues within their respective jurisdictions to the House and Senate Budget Committees. These views and estimates, along with information gleaned from hearings testimony, CBO reports, and other sources, are then used by each Budget Committee in drafting and reporting a concurrent resolution on the budget to its respective house.

Although it does not have the force of law, the budget resolution is a central part of the budget process in Congress. As a concurrent resolution, if adopted in the same form by each house, it represents an agreement between the House and Senate that establishes congressional budget priorities, and defines the parameters for all subsequent budgetary actions.<sup>10</sup> The spending, revenue, and public debt limit laws necessary to implement decisions agreed to in the budget resolution subsequently are enacted separately. Discretionary spending, which is enacted through the

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<sup>9</sup> For more on this requirement, see CRS Report 98-605, *The President's Budget: Timing of the Mid-Session Review*, by Robert Keith.

<sup>10</sup> A concurrent resolution is the legislative form used to make agreements between the House and Senate. Concurrent resolutions are not sent to the President for signature or veto. They are not a legislative form used to make law.

appropriations process, involves annual actions that must be completed before the beginning of a new fiscal year on October 1. The reconciliation process may be used to change laws affecting direct spending or revenues. Reconciliation typically follows a timetable established in the budget resolution for that year. Other budgetary legislation, such as changes in direct spending or revenue laws separate from the reconciliation process, changes in the public debt limit, or authorizing legislation, are not tied directly to the annual budget cycle. However, such legislation could be a necessary part of budgetary actions in any given year.

After appropriations and other budgetary legislation become law, the executive branch again becomes the focus of the budget process. After the end of the congressional session, the President is required to determine if a sequester is necessary to remedy any breach of the limits established under the Balanced Budget and Emergency Deficit Control Act.

The executive branch is also responsible for the execution of spending laws. Funds provided in statutes are apportioned to the appropriate agencies and programs in accordance with the Antideficiency Acts (31 U.S.C. 1341-42; 1511-1519), which prohibit agencies from obligating funds in excess of levels provided in law.

The President also may propose adjustments in spending laws under the provisions of the Impoundment Control Act of 1974 (Title X of P.L. 93-344). The Act defines two types of impoundments: deferrals and rescissions. Deferrals delay the spending of funds, while rescissions permanently cancel budgetary resources. Deferrals remain in effect unless overturned by Congress, but rescissions require the approval of Congress through the enactment of a law. The President must report both deferrals and rescissions to Congress. If Congress does not enact legislation approving the President's rescission proposals within 45 days of continuous session, the President must make the funds available for obligation.

## **The Budget Resolution and Reconciliation**

The budget resolution represents an agreement between the House and Senate concerning the overall size of the federal budget, and the general composition of the budget in terms of functional categories. The amounts in functional categories are translated into allocations to each committee with jurisdiction over spending in a process called "crosswalking" under Section 302(a) of the Congressional Budget Act. Legislation considered by the House and Senate must be consistent with these allocations, as well as with the aggregate levels of spending and revenues. Both the allocations and aggregates are enforceable through points of order. These allocations are supplemented by non-binding programmatic assumptions often included in the reports from the Budget Committees that accompany the budget resolution in each house.

In some years, the budget resolution includes reconciliation instructions. Reconciliation instructions direct specified committees to recommend changes in laws affecting revenues or direct spending programs within their jurisdiction in order to implement budget resolution policies. All committees receiving such instructions must submit legislative language to the Budget Committee in their respective chamber, which packages them as an omnibus measure and reports the measure



without substantive revision. In some cases, a single committee may be instructed to report reconciliation legislation directly. A reconciliation bill would then be considered, and possibly amended, by the full House or Senate. In the House, reconciliation bills are typically considered under the terms of a special rule. In the Senate, reconciliation bills are considered under limitations imposed by Sections 305, 310, and 313 of the Congressional Budget Act. These sections limit debate on a reconciliation bill to 20 hours and limit the types of amendments that may be considered.

## **The Appropriations Process**

The annual appropriations process provides funding for discretionary spending programs through 13 regular appropriations bills. Congress must enact these measures prior to the beginning of each fiscal year (October 1) or provide interim funding for the affected programs through a “continuing resolution.” By custom, appropriations bills originate in the House, but may be amended by the Senate, with any differences negotiated by a conference committee. Congress may also enact supplemental appropriations measures during the course of a fiscal year to provide funding for additional or unanticipated purposes.<sup>11</sup>

The House and Senate Appropriations Committees are organized into 13 subcommittees, each of which is responsible for developing one of the 13 regular appropriations bills. Each bill is subsequently considered by the full committee. Appropriations bills are constrained in terms of both their purpose and the amount of funding they provide. Appropriations are constrained in terms of purpose because the rules of both the House (Rule XXI) and the Senate (Rule XVI) generally require authorizations prior to consideration of appropriations for an agency or program. Authorizations are legislation that establish, continue, or modify an agency or program, and explicitly or implicitly authorize the enactment of appropriations for that purpose. Authorizations may be temporary or permanent, and their provisions may be general or specific, but they do not themselves provide funding. Although House and Senate rules generally prohibit unauthorized appropriations, both provide exceptions in their respective rules and the prohibition itself may be waived.

Constraints in terms of the amount of funding exist on several levels. For individual items or programs, funding might be limited to the level recommended in authorizing legislation. Total spending for a fiscal year (including both direct and discretionary spending) is limited to the level established in the budget resolution under Section 311 of the Budget Act. Also, since FY1991, the level of discretionary spending provided in appropriations acts has been limited by discretionary spending caps. These spending caps are described below. Finally, the allocations from the budget resolution made to the Appropriations Committees under Section 302(a) of the Budget Act provide limits that may be enforced procedurally through points of order in the House and Senate during consideration of the legislation. These allocations must be consistent with the discretionary spending caps.

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<sup>11</sup> For more on the appropriations process, see CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter.

Section 302(b) of the Budget Act further requires the House and Senate Appropriations Committees to subdivide the amounts allocated to them under the budget resolution among their subcommittees. These suballocations are required to be made as soon as practicable after a concurrent resolution on the budget is agreed to. Because each subcommittee is responsible for formulating a single general appropriations bill, the process of making suballocations effectively determines the spending level for each of the 13 regular appropriations bills. Legislation (or amendments) that would cause the suballocations made under 302(b) to be exceeded is subject to a point of order. The Appropriations Committees usually issue revised subdivisions over the course of appropriations actions to reflect changes in spending priorities effected during floor consideration or in conference.

## **Budget Enforcement and Sequestration**

Budget enforcement procedures were first adopted as part of the Balanced Budget and Emergency Deficit Control Act of 1985. As amended by the Budget Enforcement Act of 1990, the Act provides two separate mechanisms: spending caps in Section 251, designed to limit discretionary spending to a designated level; and the PAYGO process in Section 252, designed to limit changes in the level of revenues and direct spending by new legislation. In both cases, the mechanism is enforced both during congressional consideration of budgetary legislation and by a presidential sequester order after the end of a congressional session. If legislation is enacted that would violate the discretionary spending caps or the PAYGO requirement, the President is required to issue an order for an across-the-board spending cut of nonexempt spending programs within that category. Although ultimate enforcement of these mechanisms is through a presidential order, by enforcing the allocations and aggregates for spending and revenues provided in the budget resolution that are consistent with these limits, Congress may also use points of order to enforce them during consideration of budgetary legislation.

**Discretionary Spending Caps.** The control mechanism applied to discretionary spending programs is straightforward: the level of discretionary spending has been subject to statutory spending limits from FY1991 through FY2002. These limits were extended generally on two occasions. (The extension and modification of this mechanism is one of the options discussed in this report.) Currently, adjustments may occur automatically under procedures provided in the Act (e.g., to reflect amounts designated as emergency spending or changing concepts and definitions). The spending caps may also be adjusted through specific legislative action.

In some years, discretionary spending has been divided into multiple categories. In FY1991-FY1993, discretionary spending was divided among defense, international, and domestic spending. In FY1994-FY1997 there was a single category for discretionary spending generally. A separate category for violent crime reduction was established for FY1995-FY2000.<sup>12</sup> When discretionary spending caps

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<sup>12</sup> A separate sequestration process was established to enforce outlay limits for the Violent Crime Reduction Trust Fund in Title XXXI of the Violent Crime Control and Law (continued...)

were extended in Budget Enforcement Act of 1997 to cover FY1998-FY2002, separate categories were established for defense and nondefense spending for FY1998 and 1999 (in addition to that for violent crime reduction for FY1998-FY2000), with a single general discretionary spending limit for FY2000-FY2002. Further categories were subsequently established for highway, mass transit, and conservation spending.<sup>13</sup>

Discretionary spending limits are enforced through a presidential sequester order. Enacting spending legislation that would cause a spending cap to be exceeded would subject all nonexempt spending within that category to an across-the-board cut sufficient to reduce spending to the level of the limit. Currently, there are no general discretionary spending limits for fiscal years beyond FY2002. Also, because Section 275 of the Balanced Budget and Emergency Deficit Control Act provides a sunset for the sequester mechanism, there is no means to enforce spending limits for special categories beyond FY2002.

**Pay-As-You-Go.** The PAYGO process is not based on achieving a specific level of deficit or surplus, but instead focuses on the net impact of legislation. Under the PAYGO process, Congress is not prohibited from enacting legislation increasing direct spending or decreasing revenues. Instead, the budgetary impact of all legislation changing direct spending or revenues is tracked by OMB for inclusion in its sequestration reports on a PAYGO scorecard. Amounts on the PAYGO scorecard reflect spending and revenue changes for a fiscal year based on legislation enacted in prior years as well as the current year. All such changes must be offset so that there is not a net balance remaining on the PAYGO scorecard for any fiscal year. If the net effect of all such legislation is to cause a positive balance for a fiscal year on the PAYGO scorecard, the President must issue a sequester order to reduce spending in all nonexempt direct spending accounts to eliminate the balance.

The PAYGO provisions currently apply only to legislation enacted before October 1, 2002, but the enforcement process is scheduled to remain in effect through September 30, 2006, to capture the budgetary effects of such legislation in the outyears.

## **Reforming the Process**

While the general framework of the budget process has remained relatively stable in recent years, Congress has continued to examine the question of how budgetary decisions should be made, by whom, and under what constraints.

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<sup>12</sup> (...continued)

Enforcement Act of 1994 (P.L. 103-322, 108 Stat 2102-2108). This provision was subsequently modified to harmonize it with the extension of discretionary spending caps in Budget Enforcement Act of 1997 (Title X of P.L. 105-33).

<sup>13</sup> Categories for highway and mass transit spending were established for FY1999-2003 in Subtitle A of Title VIII of the Transportation Equity Act for the 21<sup>st</sup> Century (P.L. 105-178, 112 Stat. 488-492). Section 801(a) of the Interior Appropriations Act for FY2001 (P.L. 106-291, 114 Stat. 1025-1029) set limits on conservation spending for FY2002-2006 in six different subcategories.

Key enforcement procedures under the Budget Enforcement Act of 1990 (i.e., discretionary spending caps and PAYGO) expire at the end of FY2002. Whether Congress should extend either or both of these mechanisms, in what form and for how long, are questions that could be addressed in the 107<sup>th</sup> Congress. Other proposed reforms would add new mechanisms or procedures to the current process. There is no unifying theme for this diverse group of proposals, no single “problem” that they are all intended to “correct.” Rather, they address diverse viewpoints concerning the current process. Some proposals have been directed toward improving management of the congressional budgetary workload; some have been directed toward promoting better cooperation between Congress and the President; and others have been directed toward providing greater enforcement for congressional rules or decisions.

The options discussed in this report are five specific options on which Congress consistently has expressed a high level of interest. They are as follows:

- extending the duration of budgetary control mechanisms, in order to retain the budgetary discipline that has been in place since 1990;
- establishing a joint budget resolution that would require the President’s signature, thereby formally and directly involving the President and Congress in deliberations on the budget early in the process;
- establishing an emergency reserve fund, in order to change the way Congress and the President budget for emergencies and other unanticipated situations;
- creating an automatic continuing resolution to provide an automatic source of funding for discretionary activities and prevent a federal government shutdown; and
- changing to a biennial budget, lengthening the budget cycle to 2 years from one year as a way of promoting better management of both Congress’s and the administration’s budgetary workload.

## **Extension of Budget Enforcement Mechanisms**

Most of the budget enforcement mechanisms under the Congressional Budget Act are permanent.<sup>14</sup> In contrast, key enforcement procedures first established by the Budget Enforcement Act (BEA, Title XIII of P.L. 101-508, the Omnibus Budget Reconciliation Act of 1990) expire at the end of FY2002 (i.e., September 30, 2002). Under the BEA, budget legislation is constrained by statutory limits on discretionary spending and a “pay-as-you-go” (PAYGO) requirement for direct spending and revenue legislation. The spending caps and PAYGO requirement are enforced by sequestration—which involves automatic, largely across-the-board spending cuts—and

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<sup>14</sup> The three-fifths vote requirements in the Senate to waive certain points of order and to sustain an appeal of a ruling of the chair regarding those points of order expire on Sept. 30, 2002. See Section 904 of the CBA.

by points of order while legislation is considered on the Senate floor. The discretionary spending sequestration process and the Senate points of order expire at the end of FY2002. The PAYGO requirement also expires at the end of FY2002, but the PAYGO sequestration process covers the net effects, through FY2006, of new direct spending and revenue legislation enacted before the end of FY2002. In his FY2002 budget, President Bush proposed to extend the BEA enforcement procedures for several years. In his FY2003 budget, however, President Bush did not explicitly advocate an extension of these procedures, but indicated that his “Administration will work with Congress ... to develop budget enforcement mechanisms,” including extending the BEA procedures.<sup>15</sup>

## Background

The Budget Enforcement Act was enacted to modify the budget enforcement procedures established in 1985 by the Balanced Budget and Emergency Deficit Control Act (Title II of P.L. 99-177), commonly known as the Gramm-Rudman-Hollings Act. The Balanced Budget Act created a sequestration process tied to annual maximum deficit targets established in law, declining to zero by FY1991.<sup>16</sup> If the budget deficit exceeded those target levels (plus a margin-of-error amount in some years), automatic across-the-board spending cuts would be triggered to bring the deficit to within the allowable level. The process was intended to provide an incentive to Congress and the President to reduce the deficit through legislative action to avoid an automatic sequestration. The Budget Enforcement Act of 1990 changed the focus of the sequestration process. Instead of maximum deficit targets, the BEA tied sequestration to new statutory limits on discretionary spending and a “pay-as-you-go” (PAYGO) requirement for new direct spending and revenue legislation. The change was intended to hold Congress and the President accountable for projected budget outcomes that would result from new legislation, rather than the level of the deficit, which could be affected by factors beyond their direct control, such as economic growth, inflation, and demographic changes. The BEA procedures were extended in 1993 and 1997.<sup>17</sup>

Currently, adjustable discretionary spending limits exist for the following categories: highway and mass transit spending for FY2002-FY2003; conservation spending (divided into six subcategories) for FY2002-FY2006; and other discretionary spending, also called general purpose discretionary spending, for FY2002.<sup>18</sup> Under the PAYGO requirement, the net effect of new direct spending and

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<sup>15</sup> Office of Management and Budget, *Analytical Perspectives, Budget of the United States Government, FY2003* (Washington: Jan. 2002), p. 283.

<sup>16</sup> The deficit targets were revised in 1987 to require a balanced budget by FY1993 by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (P.L. 100-119, 101 Stat. 754-788).

<sup>17</sup> Title XIV of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) and the Budget Enforcement Act of 1997 (Title X of P.L. 105-33), respectively.

<sup>18</sup> At one time or another, separate caps existed for the following different categories of discretionary spending: defense, international, domestic, nondefense, violent crime (continued...)

revenue legislation enacted for a fiscal year may not cause a positive balance (reflecting an increase in the on-budget deficit or a reduction in the on-budget surplus) on a multiyear PAYGO “scorecard.” For each fiscal year, this scorecard maintains the balances of the accumulated budgetary effects of laws enacted during the session and prior years. The PAYGO requirement applies to legislation enacted through FY2002, but it covers the effects of such legislation through FY2006.

The discretionary spending limits and PAYGO requirement are enforced primarily by sequestration, which involves automatic, largely across-the-board spending cuts in non-exempt programs. Sequestration is triggered if the OMB director estimates in the final sequestration report that one or more of the discretionary spending limits will be exceeded or the PAYGO requirement will be violated. The President is required to issue a sequestration order cancelling budgetary resources in non-exempt programs within the applicable spending category by the amount of any spending limit breach or PAYGO violation. A within-session sequestration is possible if a supplemental appropriations bill causes the spending levels of the current fiscal year to exceed the statutory limit for a particular category. If a supplemental appropriations act causes a discretionary spending limit to be exceeded in the last quarter of a fiscal year (i.e., July 1 through September 30), the spending limit for the applicable category for the following fiscal year must be reduced by the amount of the violation.<sup>19</sup>

The discretionary spending limits, as well as a PAYGO requirement similar to the statutory one, also may be enforced through points of order while legislation is being considered on the Senate floor. First, Section 312(b) of the 1974 CBA prohibits the consideration of legislation that would cause any of the spending limits to be exceeded. Second, Section 207 of the FY2000 budget resolution (H.Con.Res. 68, 106<sup>th</sup> Congress), like similar provisions in previous budget resolutions, provides a point of order against any direct spending or revenue legislation that would increase or cause an on-budget deficit for the first fiscal year, the period of the first 5 fiscal years, or the following 5 fiscal years, covered by the most recently adopted budget resolution. Both of these points of order may be waived by a vote of three-fifths of Senators, or set aside by unanimous consent. Both of these points of order expire at the end of FY2002.

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<sup>18</sup> (...continued)

reduction, highway, mass transit, and conservation. The initial BEA of 1990 required the adjustment of the spending caps to accommodate various factors. The 1997 extension modified the set of various factors. Currently, the spending caps must be adjusted to reflect: (1) changes in concepts and definitions; (2) discretionary spending that the President designates as emergency requirements and that Congress so designates in statute; (3) special outlay allowances (to accommodate estimating differences between OMB and CBO); (4) appropriations for continuing disability reviews; (5) allowance for International Monetary Fund contributions; (6) allowance for international arrearages; and (7) appropriations for an earned income tax credit compliance initiative.

<sup>19</sup> Unless the discretionary spending limits and the associated sequestration process are extended beyond FY2002, this particular procedure will have no effect this year.

## Options and Discussion

Many Members of Congress, as well as outside observers, agree that the budget enforcement mechanisms associated with the BEA promoted fiscal discipline throughout the 1990s, and contributed to the federal government achieving a unified budget surplus in FY1998—the first in almost 30 years. Some have argued that such fiscal discipline mechanisms are necessary even in times of surpluses and that the BEA should be extended for this purpose. The return of budget deficits, at least in the short term, has further increased the interest in some form of budget enforcement procedures beyond FY2002.<sup>20</sup>

The success of the 1990 BEA, and its extensions in 1993 and 1997, is generally attributed to the fact that the procedures were used to enforce multiyear agreements on budget policies. Thus, a consensus on budget policies was a prelude to the creation and previous extensions of the BEA procedures. Presumably, then, an agreement on budget policies would be critical to the success of any extension beyond FY2002. An extension of the BEA by itself is not likely to create a consensus on budget policies where none exists.

If Congress and the President decide that these budget enforcement mechanisms should be extended, they will need to decide whether the BEA procedures should be extended in their current form or modified. Possible questions Congress might consider include:<sup>21</sup>

- *What time frame should the extension cover?* The initial BEA of 1990 and its extensions in 1993 and 1997 each covered 5 fiscal years.<sup>22</sup> Congress might want to base the time frame on the number of fiscal years determined to be necessary to achieve a specific budget goal (e.g., an on-budget balance). For instance, the 1997 extension was intended to produce a unified balanced budget at the end of the 5 fiscal years. However, the initial 1990 BEA and the 1993 extension were not intended to achieve a specific budget goal at the end of their 5 fiscal years, other than a certain amount of deficit reduction.
- *Should one overall discretionary spending cap be established, or should separate caps for different categories of discretionary spending be established?* Under an overall discretionary cap, any breach would result in a sequester in all non-exempt discretionary programs. Under separate caps, any breach of one or more of the caps would result in a sequester only in non-

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<sup>20</sup> For the latest budget projections, see Congressional Budget Office, *An Analysis of the President's Budgetary Proposals for Fiscal Year 2003* (Washington: Mar. 2002).

<sup>21</sup> This is not intended to be an exhaustive list of issues Congress may consider in extending the BEA. For additional issues, see U.S. Congress, House Committee on the Budget, *Forthcoming Extension/Modification of the Budget Enforcement Act*, hearing, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., June 27, 2001 (Washington: GPO, 2002); and U.S. Congress, House Committee on the Budget, *Federal Budget Process: Structural Reform*, hearing, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., July 19, 2001 (Washington: GPO, 2002).

<sup>22</sup> The 1990 BEA covered FY1991-FY1995; the 1993 extension covered FY1994-FY1998; and the 1997 extension covered FY1998-FY2002.



exempt programs within the violating category. Therefore, an advantage of separate caps is that they ensure a violation and subsequent sequester in one category would not harm programs in other categories. In addition, they would prevent spending cuts in one category from being used to increase spending in another category. A disadvantage of separate caps is that they would reduce the flexibility of Congress and the President by limiting the ability to make tradeoffs between programs in different categories.

- *What, if any, adjustments to the spending caps should be allowed?* Many would agree that some adjustments, or “safety valves,” are necessary to make the spending caps realistic and secure their compliance. This may be especially important at this time because of the uncertainty of future demands on federal resources for the war on terrorism and homeland security. An adjustment for such purposes may be desirable in any extension of discretionary caps. While other existing adjustments may be reexamined, the adjustment for spending designated as an emergency requirement, in particular, has been criticized by many in Congress as a costly loophole, which has been used to circumvent the statutory spending caps rather than respond to true emergencies.<sup>23</sup> Critics have proposed eliminating the emergency designation adjustment, assuming a certain level of emergency spending within the new caps, specifying criteria in statute regarding what constitutes an emergency, or a combination of these. Proponents of an emergency spending adjustment argue that realistic discretionary spending caps would prevent the misuse of the emergency designation. For more on this issue, see the discussion of budgeting for emergencies later in this report.
- *Should the PAYGO requirement for new direct spending and revenue legislation be modified to permit direct spending increases or tax cuts as long as no on-budget deficit results?* Under the existing PAYGO requirement, any on-budget surplus cannot be used for direct spending increases or tax cuts.<sup>24</sup> Opponents of the current requirement argue that this should be changed to apply only to new direct spending or revenue legislation that would increase the on-budget deficit or cause an on-budget deficit, similar to the current PAYGO point of order in the Senate.<sup>25</sup> Proponents of the existing requirement argue that any on-budget surplus should be used for debt reduction, or to extend the solvency of the Social Security and Medicare trust funds, instead of direct spending increases or tax cuts.

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<sup>23</sup> For example, see U.S. Congress, House Committee on the Budget, *H.R. 853, The Comprehensive Budget Process Reform Act of 1999*, 106<sup>th</sup> Cong., 1<sup>st</sup> sess., Aug. 5, 1999 (Washington: GPO, 1999), pp. 38-46; and U.S. Congress, House Committee on Rules, *H.R. 853, The Comprehensive Budget Process Reform Act of 1999*, 106<sup>th</sup> Cong., 1<sup>st</sup> sess., Aug. 5, 1999 (Washington: GPO, 1999), pp. 67-70.

<sup>24</sup> For a more detailed discussion of the application of the PAYGO requirement under a budget surplus, see CRS Report 98-97, *The Budget Enforcement Act: Fact Sheet On Its Operation Under a Budget Surplus*, by James V. Saturno.

<sup>25</sup> Section 207 of the FY2000 budget resolution (H.Con.Res. 68, 106<sup>th</sup> Cong.).



## Legislative History

For at least the last 2 years, there has been congressional interest in modifying and possibly extending the BEA procedures beyond FY2002. The emergence of budget surpluses contributed to increased fiscal demands (i.e., for spending increases and tax cuts), which arguably made existing budget enforcement constraints inappropriate.<sup>26</sup> Nevertheless, a consensus began to emerge that some ongoing constraints on budget policy were necessary even in times of surpluses, but different ones than those created in times of deficits.

In the last few years, Congress and the President have made ad hoc modifications to the BEA to avoid a sequester for the upcoming fiscal year or to reduce the likelihood of a sequester in future fiscal years.<sup>27</sup> Most recently, the Defense Appropriations Act for FY2002 (P.L. 107-117) included provisions increasing certain discretionary spending limits for FY2002 and changing the PAYGO scorecard balance to zero for FY2001 and FY2002. Such modifications to the discretionary spending limits and PAYGO scorecard effectively prevented an end-of-the-session sequester for FY2002.<sup>28</sup>

A more comprehensive description of congressional actions on this issue appears in the CRS Report RL31479, *Federal Budget Process Reform: Proposals and Legislative Actions in the 107<sup>th</sup> Congress*.

## Joint Budget Resolution

Conflict is inherent in budgeting because decisions are made regarding who receives benefits and who does not, and who pays and who does not. By itself the process in which these decisions are made cannot eliminate substantive differences in budgetary goals within Congress or between Congress and the President. A structure for consideration of budgetary decisions, however, can sometimes reduce or exacerbate budgetary conflict. Some Members of Congress argue that the annual adoption of the congressional budget in the form of a concurrent resolution, without the formal involvement of the President, discourages cooperation between Congress and the President early in the process. They argue that this contributes to the recurring inability of Congress and the President to enact spending and tax legislation

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<sup>26</sup> For example, the FY2002 budget resolution (H.Con.Res. 83) assumed discretionary spending amounts much higher than the existing caps for FY2002, as well as direct spending and revenue legislation that would have violated the PAYGO requirement. In addition, during the 1<sup>st</sup> session of the 107<sup>th</sup> Congress, legislation was introduced in the House (H.R. 3084) and Senate (S. 1575) to revise the discretionary spending caps for FY2002, and in the former to eliminate the existing balance for FY2002 on the PAYGO scorecard as well. The House Budget Committee reported H.R. 3084 favorably on Dec. 13, 2001 (H.Rept. 107-338), but no further action was taken on that legislation or the Senate bill.

<sup>27</sup> For detailed information on these modifications, see CRS Report RL31155, *Techniques for Preventing a Budget Sequester*, by Robert Keith.

<sup>28</sup> Office of Management and Budget, *OMB Final Sequestration Report to the President and Congress for Fiscal Year 2002* (Washington: Jan. 2002).

by the beginning of the fiscal year. Some Members of Congress, as well as President Bush,<sup>29</sup> have proposed to transform the annual congressional budget from a concurrent resolution to a joint resolution, and thereby formally and directly involve the President in congressional deliberations on the budget early in the process. Like bills, joint resolutions are a legislative form used to make law.

## Background

Prior to the Congressional Budget Act (CBA) of 1974 (Titles I-IX of P.L. 93-344), Congress did not adopt an overall budget plan, but rather considered authorization, revenue, and appropriations legislation separately. There was no formal mechanism in place to develop, consider, and approve a comprehensive congressional budget plan. The 1974 CBA established the annual concurrent resolution on the budget as the centerpiece of the congressional budget process. The budget resolution sets forth aggregate spending and revenue levels, and spending levels by major functional area, for at least 5 fiscal years. The budget resolution also may contain reconciliation instructions directing one or more committees to recommend legislative changes to achieve the levels of direct spending, revenues, and the debt limit agreed to in the budget resolution. Because the budget resolution is in the legislative form of a concurrent resolution, it is not presented to the President for his signature, and thus does not become law. Instead, if adopted with the same language by both the House and Senate, it constitutes an agreement between the House and Senate on a congressional budget plan, providing a framework for subsequent legislative action on budgetary legislation during a session of Congress.

During the development and consideration of the Congressional Budget Act, Congress intentionally decided to express its overall budget plan in the form of a concurrent resolution in order to create a budget process “independent of the President and dependent solely on congressional action” under which Congress would be “unconstrained by presidential preferences.”<sup>30</sup> The concurrent budget resolution provides Congress with its own statement of budget policy, generally as a response to the President’s budget. Critics argue that this process highlights, and may even encourage, the conflict between the two branches during the initial formulation of budget policies each year. They further argue that this process makes it more difficult for the two branches to cooperate later in the process when substantive spending and revenue measures require the President’s signature. In particular, critics claim that this disincentive for early cooperation in the process contributes to the recurring inability of Congress and the President to enact the regular appropriations acts by the beginning of the fiscal year on October 1. In the 27 years since the creation of the budget resolution in 1974, all regular appropriations bills were enacted by the start of the fiscal year only four times, in 1976, 1988, 1994, and 1996.

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<sup>29</sup> Office of Management and Budget, *Analytical Perspectives, Budget of the United States Government, FY2003* (Washington: Jan. 2002), pp. 283-284.

<sup>30</sup> Allen Schick, *Congress and Money* (Washington: Urban Institute, 1980), p. 60.

## Options and Discussion

Some Members of Congress have proposed transforming the concurrent resolution on the budget into a joint resolution, requiring the President's signature. They argue that a joint budget resolution would be more effective in guiding budget policy by formally and directly involving the President in congressional deliberations on the budget early in the process. According to proponents, this early involvement would foster cooperation between the two branches, leading to less conflict when spending and tax legislation implementing budget resolution policies are finalized later in the session.

Proponents of a joint budget resolution point to the apparent success of budget summits, where congressional leaders and the President have negotiated an agreement on an overall budget plan and then implemented that agreement with the subsequent enactment of legislation. A recent example is the inter-branch negotiations that led to the 1997 bipartisan budget agreement.<sup>31</sup> A joint budget resolution, advocates argue, would formalize these negotiations, effectively requiring Congress and the President to begin negotiations on the budget early in the process each year. They claim that early negotiations and the requirement that the President sign the budget resolution would increase the likelihood of the two branches reaching an agreement over broad budget policies. If an early agreement is not reached, proponents argue that at the very least the formal process would force Congress and the President to confront the disagreements early in the process, instead of at the end when there is a rush to enact all the appropriations measures by the start of the new fiscal year in order to avoid a government shutdown.

Critics of a joint budget resolution counter that formalizing early negotiations between Congress and the President would not guarantee agreement on budget policies. They contend that interbranch negotiations and any subsequent agreement largely depend on the degree of consensus on budget policy, rather than budget procedures. Opponents further argue that requiring the President to sign the budget resolution may even make an agreement more difficult to reach by aggregating the budget disputes into one piece of legislation and thereby raising the political stakes.

Opponents also argue that agreement on broad budget policies would not prevent disagreements from arising over details in subsequent legislation implementing those policies. Thus, they contend that transforming the concurrent budget resolution into a joint resolution would not itself result in more timely enactment of budgetary legislation, as intended by its supporters. The 1997 bipartisan budget agreement is cited as an illustrative example. Even though Congress and the President agreed to a broad 5-year plan to balance the budget by FY2002 in late spring 1997, final action on budgetary legislation implementing the agreement did not occur until well after the start of the new fiscal year. Only one regular appropriations measure for FY1998 was enacted by October 1, and the final

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<sup>31</sup> For a summary of these negotiations and the subsequent agreement, see "Pact Aims To Erase Deficit by 2002," *CQ Almanac* (Washington: Congressional Quarterly, Inc., 1997), pp. 2-18 to 2-23.

two regular appropriations measures for FY1998 were not enacted until November 26 (i.e., 57 days late).<sup>32</sup>

Finally, critics claim that a joint budget resolution would result in a cession of power to the President. They argue that, by providing the President an opportunity to veto the budget resolution, Congress would be giving up its independence to formulate and adopt its own overall budget plan, as the President does with his annual budget submission to Congress. Proponents, however, counter that a joint budget resolution would not provide the President with any more power than he already exercises under the existing budget process. They point to the fact that the President's signature is required on the spending and revenue legislation implementing the budget resolution policies; thus, a joint budget resolution would simply entail obtaining the President's approval at the beginning of the process instead of only at the end.

## Legislative History

Early congressional interest in converting the concurrent resolution on the budget into a joint resolution coincided with the practice of negotiating budget agreements between congressional leaders and the President, commonly referred to as budget summits, beginning in the late 1980s.<sup>33</sup> Since then, a joint budget resolution has been a perennial component of budget process reform proposals in Congress. Between 1989 and 2000, at least 26 bills were introduced that would have converted the concurrent budget resolution into a joint budget resolution. On March 31, 1998, the Task Force on Budget Process of the House Budget Committee held the first hearing specifically concerned with the question of whether the concurrent budget resolution should be converted into a joint resolution.<sup>34</sup> This hearing, along with other hearings on the subject of budget process reform by the task force, led to the introduction in the House of a comprehensive budget process reform bill containing a joint resolution component, during the 105<sup>th</sup> Congress (H.R. 4837, the Comprehensive Budget Process Reform Act of 1998).

No action was taken in the 105<sup>th</sup> Congress, but the legislation was reintroduced in the 106<sup>th</sup> Congress with virtually identical language as H.R. 853, the

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<sup>32</sup> The Military Construction Appropriations Act for FY1998 (P.L. 105-45) was enacted on Sept. 30, 1997, and the Foreign Operations Appropriations Act for FY1998 (P.L. 105-118) and the Commerce, Justice, State, and Judiciary Appropriations Act for FY1998 (P.L. 105-119) were enacted on Nov. 26, 1997.

<sup>33</sup> For early discussions of joint budget resolution proposals, see U.S. Congress, House Committee on Government Operations, *Reform of the Federal Budget Process: An Analysis of Major Proposals*, 100<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, June 1987), pp. 75-77; U.S. Congress, Senate Committee on Governmental Affairs, *Proposed Budget Reforms: A Critical Analysis*, 100<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, Apr. 1988), pp. 28-32; and Congressional Budget Office, *Should the Budget Resolution Be a Law?* (Washington: May 1990).

<sup>34</sup> U.S. Congress, Task Force on Budget Process, House Committee on the Budget, *Converting the Concurrent Budget Resolution into a Joint Resolution: Should the Budget Be a Law?*, hearing, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., Mar. 31, 1998 (Washington: GPO, 1998).

Comprehensive Budget Process Reform Act of 1999. Title I of H.R. 853 provided an annual joint resolution on the budget to replace the concurrent budget resolution.<sup>35</sup> Hearings on the bill were held by the House Rules Committee on May 12 and 13, 1999,<sup>36</sup> and by the House Budget Committee on May 20, 1999.<sup>37</sup> Subsequently, H.R. 853 was ordered reported (amended) by the House Budget Committee (H.Rept. 106-198, part 2) on June 17, 1999, and by the House Rules Committee (H.Rept. 106-198, part 3) on June 23, 1999.<sup>38</sup> The legislation, however, was defeated on the House floor by a vote of 166-250 on May 16, 2000.<sup>39</sup>

## Budgeting for Emergencies

In recent years, some Members of Congress have shown an interest in changing the way Congress and the executive budget for emergencies or unanticipated situations. Currently, Congress provides additional funds during the fiscal year, usually in supplemental appropriations, to respond to specific natural disasters and other emergency, or unanticipated, situations. Congress and the President usually designate the additional spending as an “emergency requirement,” effectively exempting it from budget constraints established under the Budget Enforcement Act (BEA) of 1990, as amended.<sup>40</sup> Some Members of Congress, as well as President George W. Bush,<sup>41</sup> have proposed to change this practice by creating a reserve fund for emergencies, with the appropriation of such funds tied to meeting specific criteria regarding what constitutes an emergency.

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<sup>35</sup> For a detailed description and analysis of this legislation, see CRS Report RL30236, *H.R. 853, The Comprehensive Budget Process Reform Act: Summary of Provisions*, by James V. Saturno.

<sup>36</sup> U.S. Congress, House Committee on the Rules, *Budget Process Reform*, hearing, 106<sup>th</sup> Cong., 1<sup>st</sup> sess., May 12 and 13, 1999 (Washington: GPO, 1999).

<sup>37</sup> U.S. Congress, House Committee on the Budget, *H.R. 853, The Comprehensive Budget Process Reform Act of 1999*, hearing, 106<sup>th</sup> Cong., 1<sup>st</sup> sess., May 20, 1999 (Washington: GPO, 1999).

<sup>38</sup> H.R. 853 also was referred to the House Appropriations Committee, but only for consideration of the provision providing for a permanent automatic continuing resolution (Subtitle D of Title VI). The House Appropriations Committee ordered the bill reported adversely (amended) on June 22, 1999 (H.Rept. 106-198, part 1).

<sup>39</sup> For the consideration of H.R. 853 on the House floor, see *Congressional Record*, daily edition, vol. 146, May 16, 2000, pp. H3078-H3145.

<sup>40</sup> The BEA of 1990 (Title XIII of P.L. 101-508) amended the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177). The BEA procedures were extended and modified by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66, specifically Title XIV) and by the Budget Enforcement Act of 1997 (Title X of P.L. 105-33).

<sup>41</sup> Office of Management and Budget, *A Blueprint for New Beginnings* (Washington: Feb. 28, 2001), p. 173. However, President Bush did not include an emergency reserve fund among the budget process reform proposals in his FY2003 budget.

## Background

Natural disasters and other emergency situations often lead to demands on Congress and the President to provide additional federal spending after the regular appropriations acts for the current fiscal year have been enacted into law.<sup>42</sup> The sudden or unpredictable nature of such emergencies makes spending requirements difficult to anticipate so that the additional spending often is considered in an environment of urgency, with little or no comprehensive analysis of the appropriate level of such federal spending. Some believe this practice of budgeting for emergencies might lead to unnecessary or wasteful spending. In addition, some believe that the existing budgetary treatment of emergency spending provides an incentive to designate non-emergency spending as an emergency requirement in order to circumvent the constraints of the BEA.

Prior to the Congressional Budget Act (CBA) of 1974 (Titles I-IX of P.L. 93-344), there was no formal mechanism in place to develop, consider, and approve an overall congressional budget plan. Consequently, there was no formal mechanism in Congress to budget for unanticipated spending. The 1974 CBA established the annual budget resolution as a means for Congress to propose an overall budget plan, providing a framework for subsequent spending and revenue legislation. With the annual budget resolution, Congress could budget for emergency situations by including spending amounts for such expected but unpredictable purposes in its overall budget plan. In fact, Section 301(a)(2) of the original act required that the budget resolution include a separate spending allocation “for contingencies” out of the total spending amount. However, no budget resolution has included a separate allocation for contingencies, and the requirement for contingency spending was removed from the CBA by the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177).

The current budgetary treatment of emergency spending has its roots in the 1987 and 1989 budget summit agreements between congressional leaders and the President.<sup>43</sup> In both agreements, Congress and the President agreed to limits on the overall level of appropriations provided in the annual 13 regular appropriations acts and also that neither the Congress nor the President would “initiate supplementals except in the case of dire emergency.”<sup>44</sup> This exception to the agreed-upon spending

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<sup>42</sup> Such additional spending may be intended to respond to a sudden natural disaster, but it also may be intended to respond to an anticipated situation when the total amount necessary may be unanticipated. An example of the latter would be the emergency spending provided for Desert Shield/Desert Storm in FY1991-FY1992. In 1990, Congress and the President anticipated that additional spending would be necessary to conduct a war in the Persian Gulf, but could not anticipate the total amount of spending necessary.

<sup>43</sup> William G. Dauster, “Budget Emergencies,” *Journal of Legislation*, vol. 18, no. 2 (1992), pp. 249-315.

<sup>44</sup> Quoted in *Ibid.*, p. 252. For the full text of the 1987 agreement, see “Summit Agreement Between the President and the Joint Leadership of Congress,” *Congressional Record*, vol. 134, May 11, 1988, p. 10435. For the full text of the 1989 agreement, see “White House Statement on the Bipartisan Budget Agreement, April 14, 1989,” U.S. President, *Public* (continued...)

caps was intended to provide a “safety valve” for spending that both Congress and the President could agree was a dire emergency. Neither agreement included a definition of what constituted a dire emergency, but instead relied on the normal legislative process to ensure a mutual agreement on supplemental appropriations.

In 1990, Congress and the President established new statutory procedures to enforce a multi-year budget agreement. The Budget Enforcement Act of 1990 created statutory limits on discretionary spending and a “pay-as-you-go” (PAYGO) requirement for new direct spending and revenue legislation. The discretionary spending limits and PAYGO requirement would be enforced by sequestration, which involves automatic, largely across-the-board spending cuts in non-exempt programs. These enforcement mechanisms were modified and extended in 1993 and 1997, and generally expire at the end of FY2002 (i.e., September 30, 2002).<sup>45</sup>

The 1990 BEA also formalized the limitation on budgeting for emergencies embodied in the previous budget summit agreements. The act effectively exempts from the statutory caps all discretionary spending the President designates as “emergency requirements” and that Congress so designates in statute.<sup>46</sup> In addition, provisions in new direct spending and revenue legislation designated as emergency requirements by the President and Congress are exempt from the PAYGO requirement.<sup>47</sup> The emergency designation also effectively exempts such spending, or tax cuts, from congressional budget constraints, such as the aggregate levels established in the budget resolution, when legislation is considered on the House and Senate floor.

As with the previous budget summit agreements, the BEA does not define what constitutes an emergency requirement. According to the law, an emergency requirement is whatever Congress and the President agree to designate as such. In 1991, responding to a congressional directive to report on the unfunded costs of dire

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<sup>44</sup> (...continued)

*Papers of the Presidents*, (Washington: GPO, 1990), George Bush, 1989, vol. I, pp. 424-426.

<sup>45</sup> For a fuller discussion on these and other budget enforcement procedures, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith and Allen Schick.

<sup>46</sup> Section 251(b)(2)(A) of the Balanced Budget Act of 1985, as amended by the BEA, requires the OMB director to adjust the statutory limits by the total appropriations designated as emergency requirements and the outlays flowing from such appropriations. The 1990 BEA language also specifically exempted the costs associated with Desert Shield/Desert Storm from the statutory spending limits by designating them to “be treated as emergency funding requirements.” For further discussion on the statutory and congressional rules related to the emergency designation, see CRS RS21035, *Emergency Spending: Statutory and Congressional Rules*, by James V. Saturno.

<sup>47</sup> As amended in 1990, Section 252(d)(4)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 requires the OMB director to exclude the costs of such provisions in calculating the net costs of new direct spending and revenue legislation enacted during a congressional session for PAYGO purposes. The emergency designation has been used four times for legislation subject to PAYGO (Section 6 of P.L. 103-6; Section 3309(c) of P.L. 105-206; Section 101(b) of P.L. 107-42; and Section 502 of P.L. 107-147).



emergencies, the Office of Management and Budget (OMB) developed the following five criteria the President would use to determine whether a spending provision would qualify as an emergency requirement:<sup>48</sup>

- necessary expenditure—an essential or vital expenditure, not one that is merely useful or beneficial;
- sudden—quickly coming into being, not building up over time;
- urgent—pressing and compelling need requiring immediate action;
- unforeseen—not predictable or seen beforehand as a coming need; and
- not permanent—the need is temporary in nature.

In addition to these non-binding criteria, the House and Senate have adopted rules to discourage the use of the emergency designation. In the House, clause 2(e) was added to Rule XXI in 1995 to prevent non-emergency spending from being reported in, or offered as an amendment to, an appropriations bill that contains an emergency designation. In the Senate, Section 205 of the FY2001 budget resolution (H.Con.Res. 290, 106<sup>th</sup> Congress) prohibits an emergency designation for any provision of legislation, except for defense discretionary appropriations. The rule may be waived by a three-fifths vote or set aside by unanimous consent.<sup>49</sup> The rule includes the OMB criteria as guidelines for designating provisions of legislation as emergency requirements, but does not require emergency designations meet these criteria.

Notwithstanding the OMB guidelines and congressional budget rules, critics have argued that the emergency designation has been used for non-emergency spending in order to circumvent budget constraints. As evidence, critics point to the increase in emergency-designated spending in recent years. For instance, emergency-designated spending for FY1999 was more than three times the annual average for the preceding 7-year period (see **Table 1**).<sup>50</sup> Emergency-designated spending for FY2000 was more than four times that annual average.<sup>51</sup>

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<sup>48</sup> The congressional directive was included in an Emergency Supplemental Appropriations Act (chapter III of P.L. 102-55, 105 Stat. 293), and OMB's response, including the criteria, was contained in a report entitled, "Report on the Costs of Domestic and International Emergencies and on the Threats Posed by the Kuwaiti Oil Fires," transmitted to Congress on June 27, 1991. Dauster, "Budget Emergencies," p. 275.

<sup>49</sup> The current rule does not have an expiration date. An earlier, temporary, version of the rule was included in the budget resolution for FY2000 (Section 206 of H.Con.Res. 68, 106<sup>th</sup> Congress).

<sup>50</sup> FY1991 was not included in these calculations because it predominately consisted of spending for Desert Shield/Desert Storm, which was offset completely by foreign contributions.

<sup>51</sup> For additional information on emergency-designated spending trends, see Congressional Budget Office (CBO), "Emergency Spending Under the Budget Enforcement Act" (Washington: Dec. 1998); and CBO, "Emergency Spending Under the Budget Enforcement Act: An Update" (Washington: June 1999).



**Table 1. Spending Designated as Emergency Requirements,  
FY1991-FY2002**

(millions of dollars of budget authority)

Fiscal Year	Defense	Non-Defense	Total
1991	44,387	1,459	45,846
1992	7,527	8,784	16,311
1993	642	5,487	6,129
1994	1,497	12,289	13,786
1995	2,448	5,949	8,397
1996	982	3,764	4,746
1997	2,107	7,219	9,326
1998	2,833	3,070	5,903
1999	17,570	16,656	34,226
2000	17,833	26,418	44,251
2001	14,196	14,548	28,744
2002	3,870	18,330	22,200

**Source:** Congressional Budget Office. Data are current as of April 25, 2002.

## Options and Discussion

Proposals to reform the existing process of budgeting for emergencies largely involve establishing a reserve fund for emergencies, with the appropriation of such funds tied to meeting specific criteria concerning what constitutes an emergency.

Proponents of an emergency reserve fund argue that the average annual amount of overall emergency spending can be projected based on past experience, even though specific emergencies cannot be predicted. Therefore, they further argue that an expected amount of emergency spending should be incorporated into the overall amount of spending in the President's budget and the budget resolution, as well as any statutory spending limits if they are extended beyond FY2002. Proponents of an emergency reserve fund suggest that an historical average of actual emergency spending would provide sufficient funds to meet specific emergencies as they arise. For instance, the most recent emergency reserve fund proposal (H.R. 853, 106<sup>th</sup> Congress, the Comprehensive Budget Process Reform Act of 1999) required that such a fund be based on a 5-year rolling average of actual emergency spending.

Some critics have questioned whether setting aside funds for unknown emergency situations is appropriate, particularly when the federal budget shows a deficit. The money set aside for an emergency reserve fund presumably would require limiting, and may even require reducing, spending for ongoing programs and

activities. Making such choices at the beginning of the budget process would require Congress to make tradeoffs between specific ongoing programs and general emergency situations. That is, Congress would be required to make offsetting cuts in ongoing programs without knowing what specific situation or purpose it was financing, or even if all of the funding would be needed. In contrast, under the current process, Congress can weigh the merits of spending for ongoing programs with those of a specific emergency situation. Some may argue that this existing process allows Congress to make more rational budgetary tradeoffs. In addition, setting aside a large specified amount of funds may provide an incentive to appropriate more funds than necessary in order to spend the entire amount in the reserve fund by the end of the fiscal year. In contrast, the current process does not provide any incentives to spend a specific amount on emergencies, but only an amount determined as emergency situations arise.

Emergency reserve fund proposals also require that appropriations from the reserve fund meet specific criteria regarding what constitutes an emergency. Proponents often suggest variations of the OMB criteria issued in 1991. For instance, H.R. 853 (106<sup>th</sup> Congress) defined an emergency as a situation that requires new spending “for the prevention or mitigation of, or response to, loss of life or property, or a threat to national security” and is unanticipated. This proposal defined an unanticipated situation as one that is sudden, urgent, unforeseen, and temporary.

Critics of enacting specific criteria into law often argue that such mechanisms could hinder the ability of Congress and the President to respond to emergency situations quickly. They maintain that any specific criteria would not eliminate the subjective nature of the decision-making process. Instead, they argue that a reserve fund mechanism tied to specific criteria would give a few decision makers, presumably the chairs of the Budget Committees, effective control over emergency spending decisions. Therefore, disagreements over the application of the specific criteria with those in Congress who would be responsible for releasing such funds potentially could cause unnecessary delays in responding to emergency situations. In addition, a requirement to meet each criterion might neglect the unique circumstances of any given emergency situation. For instance, the urgency of a particular situation may outweigh the failure to meet all criteria.

Proponents of an emergency reserve fund mechanism also propose to eliminate the emergency designation process associated with the Budget Enforcement Act. As noted above, spending designated as an emergency by Congress and the President is effectively exempt from the statutory spending caps. If the BEA procedures are not extended beyond FY2002, the emergency designation issue will be irrelevant. If the BEA procedures are extended, proponents argue that new discretionary spending limits should assume a certain level of emergency spending, based on an historical average, making an adjustment for emergency-designated spending unnecessary. They maintain that the emergency designation process is a “costly” loophole, which has been used to circumvent the statutory spending caps rather than respond to true emergencies. Opponents, however, argue that allowing adjustments for unanticipated spending provide a necessary safety valve within the restrictive spending constraints. They claim that this safety valve is essential to the effectiveness of the spending caps to restrain discretionary spending.

## Legislative History

Since the first federal statutory control on emergency spending was established in 1990 under the BEA, Congress has expressed an interest in the possibility of further limits. Legislation to create a reserve fund for natural disasters and other emergency situations was introduced at least as early as the 103<sup>rd</sup> Congress (1993-1994).<sup>52</sup> On June 23, 1998, the Task Force on Budget Process of the House Budget Committee held a hearing on the general subject of the budgetary treatment of emergencies.<sup>53</sup> This hearing, along with other hearings on the subject of budget process reform by the task force, led to the introduction in the House of a comprehensive budget process reform bill containing an emergency reserve fund during the 105<sup>th</sup> Congress (H.R. 4837, the Comprehensive Budget Process Reform Act of 1998).

No action was taken on this legislation in the 105<sup>th</sup> Congress, but the proposal was reintroduced in the 106<sup>th</sup> Congress as H.R. 853, the Comprehensive Budget Process Reform Act of 1999. Title II of H.R. 853 required the budget resolution to include an emergency reserve fund and tied the allocation of those funds to whether the spending met specific criteria of what constitutes an emergency.<sup>54</sup> Hearings on the bill were held by the House Rules Committee on May 12 and 13, 1999,<sup>55</sup> and by the House Budget Committee on May 20, 1999.<sup>56</sup> Subsequently, H.R. 853 was ordered reported (amended) by the House Budget Committee (H.Rept. 106-198, part 2) on June 17, 1999, and by the House Rules Committee (H.Rept. 106-198, part 3) on June 23, 1999.<sup>57</sup> The legislation, however, was defeated on the House floor by a vote of 166-250 on May 16, 2000.<sup>58</sup>

Notwithstanding this unsuccessful effort to create an emergency reserve fund, the House and Senate have adopted rules to discourage the use of the emergency

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<sup>52</sup> During the period covering the 103<sup>rd</sup> Congress - 106<sup>th</sup> Congress (1993-2000), at least 12 bills were introduced that would have created a reserve fund for emergencies.

<sup>53</sup> U.S. Congress, Task Force on Budget Process, House Committee on the Budget, *Budgetary Treatment of Emergencies*, hearing, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 23, 1998 (Washington: GPO, 1998).

<sup>54</sup> For a detailed description and analysis of this legislation, see CRS Report RL30236, *H.R. 853, The Comprehensive Budget Process Reform Act: Summary of Provisions*, by James V. Saturno.

<sup>55</sup> U.S. Congress, House Committee on the Rules, *Budget Process Reform*, hearing, 106<sup>th</sup> Cong., 1<sup>st</sup> sess., May 12 and 13, 1999 (Washington: GPO, 1999).

<sup>56</sup> U.S. Congress, House Committee on the Budget, *H.R. 853, The Comprehensive Budget Process Reform Act of 1999*, hearing, 106<sup>th</sup> Cong., 1<sup>st</sup> sess., May 20, 1999 (Washington: GPO, 1999).

<sup>57</sup> H.R. 853 also was referred to the House Appropriations Committee, but only for consideration of the provision providing for a permanent automatic continuing resolution (Subtitle D of Title VI). The House Appropriations Committee ordered the bill reported adversely (amended) on June 22, 1999 (H.Rept. 106-198, part 1).

<sup>58</sup> For the consideration of H.R. 853 on the House floor, see *Congressional Record*, daily edition, vol. 146, May 16, 2000, pp. H3078-H3145.

designation associated with the BEA, as mentioned above. First, the House added clause 2(e) to Rule XXI in 1995 to prevent non-emergency spending from being reported in, or offered as an amendment to, an appropriations bill that contains an emergency designation. Second, the Senate created a temporary point of order in 1999 prohibiting an emergency designation for any provision of legislation, except for defense discretionary appropriations, and requiring a three-fifths vote to waive it.<sup>59</sup> In 2000, the Senate subsequently made this point of order permanent in the FY2001 budget resolution (Section 205 of H.Con.Res. 290, 106<sup>th</sup> Congress).

## Automatic Continuing Resolutions

Delays in the consideration and enactment of appropriations have been a source of chronic difficulties in the budget process. When delays prevent the enactment of regular appropriations before the start of the fiscal year (October 1), Congress and the President typically enact stop-gap funding in the form of continuing resolutions (CRs). If neither the regular appropriation for an agency nor a continuing resolution is enacted, funding will lapse for that agency. Such a lapse, or funding gap, will result in a shutdown of the affected agency. One possible reform of the budget process that has been proposed is to provide for the automatic continuation of appropriations at the start of a fiscal year in the absence of an agency's regular appropriation, to avert shutdowns.<sup>60</sup>

In some ways, an automatic continuing resolution is an alternative to biennial budgeting as a method for dealing with delays in the consideration and enactment of budgetary legislation. Rather than provide a longer, defined period for consideration, an automatic continuing resolution would provide an indefinite period, and alleviate the most dire consequence of failure to enact appropriations in a timely fashion.

## Background

Continuing resolutions have been employed to provide temporary funding of federal agencies and programs since 1876, and have become a regular part of the annual budget cycle. Since the start of the fiscal year was shifted to October 1 beginning with FY1977, there have been only 3 years for which no continuing resolutions have been enacted, FY1989, 1995, and 1997.<sup>61</sup> **Table 2** (below) shows the number of regular appropriations bills that were enacted at the beginning of the new fiscal year since FY1990.

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<sup>59</sup> Section 206 of the FY2000 budget resolution (H.Con.Res. 68, 106<sup>th</sup> Cong.).

<sup>60</sup> For more on funding gaps and automatic continuing resolutions, see CRS Report RL30339, *Preventing Federal Government Shutdowns: Proposals for an Automatic Continuing Resolution*, by Robert Keith.

<sup>61</sup> Although all of the regular appropriations act were enacted prior to October 1, 1976, for FY1977, two continuing resolutions were enacted to fund certain unauthorized programs that had been omitted from regular appropriations acts.

There are no requirements concerning the duration of continuing resolutions. Some may provide funding for a single day, while others may provide funding for several weeks, or even through the end of the fiscal year.<sup>62</sup> Consequently, the number of continuing resolutions enacted can vary independent of the length of time after October 1 required to complete action on appropriations. In addition to regular appropriations bills enacted, **Table 2** shows the number of continuing resolutions that have been enacted since FY1990.

**Table 2. Regular Appropriations Enacted by October 1 and Continuing Resolutions Enacted, by Fiscal Year, FY1990-FY2002**

Fiscal Year	Number of Regular Appropriations Enacted by October 1	Number of Continuing Resolutions Enacted
1990	1	3
1991	0	5
1992	3	4
1993	1	1
1994	2	3
1995	13	0
1996	0	14
1997	13	0
1998	1	6
1999	1	6
2000	4	7
2001	2	21
2002	0	8

**Source:** Calendars of the House of Representatives.

There are also no requirements concerning the form in which appropriations must be provided in continuing resolutions. Because continuing resolutions are generally written for short periods of time they are usually framed in terms of rates of spending (roughly the annual level of funding divided by the duration of the CR) rather than specific amounts of money. Continuing resolutions typically provide funds at some formula-driven rate, such as some percentage of the previous year's rate, or the rate provided in an appropriations bill passed by the House (or Senate), but not yet ready for transmittal to the President. However, continuing resolutions may also provide exceptions to such formulas, providing more or less funding as

<sup>62</sup> From the late 1970s through the late 1980s, it was common practice for continuing resolutions to become vehicles for one or more regular appropriations acts. This practice reached its peak in FY1987 and 1988, when the final continuing resolution incorporated all 13 regular appropriations acts.

deemed necessary for specific agencies or programs. It should also be noted that in most cases, continuing resolutions provide funds only for the continuation of funding for existing agencies and programs, and not for any new spending initiatives.

Continuing resolutions are necessary because a lapse in funding for an agency or program will result in a shutdown of the affected agency. This is because the Antideficiency Act generally prohibits an agency from entering into any obligation to spend federal funds in the absence of appropriations.<sup>63</sup> As a result, in the event of a funding gap, federal agencies are required to shut down all non-emergency functions and activities. The Budget Enforcement Act subsequently provided that the exception for emergencies does not include “ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.”<sup>64</sup>

One factor complicating the consideration of an automatic continuing resolution in recent years has been how they are regarded under the current system of budgetary control. The current system differentiates between discretionary and direct spending. Although continuing appropriations are considered discretionary spending, an automatic continuing resolution would be regarded as direct spending because it would provide legal authority to obligate funds outside of the regular appropriations process. As a result, the cost estimate for H.R. 853 and S. 558 prepared by CBO would have a significant impact on the PAYGO process.<sup>65</sup> Under current procedures, the consideration of a bill to provide an automatic continuing resolution could thus be potentially subject to points of order enforcing PAYGO. The enactment of a measure containing direct spending could also be problematic under current procedures, and could trigger a sequester if it were not offset (by reductions in other direct spending, increases in revenues, or some combination of both) or if statutory language was not also enacted to make compensatory adjustments to the PAYGO scorecard.

## Options and Discussion

The main feature for distinguishing among the possible options for an automatic continuing resolution has been the funding level. Proposals have been discussed that would provide funding at the level of the previous fiscal year (or the previous fiscal year’s level adjusted for inflation); a set percentage of the level of the previous fiscal year (such as 95% or 98%); the House- (or Senate-) passed level; or even the level recommended in the President’s budget.

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<sup>63</sup> First enacted in 1870, and strengthened in 1905 and 1906, the Antideficiency Act is codified at 31 U.S.C. 1341-1342, 1511-1519. The application has also been clarified by Attorney General opinions, notably those issued by Benjamin Civiletti in 1980 and 1981. For more on the impact of shutdowns on federal operations, see CRS Report 98-844, *Shutdown of the Federal Government: Causes, Effects, and Process*, by Sharon S. Gressle.

<sup>64</sup> Section 13213 of P.L. 101-508 (104 Stat. 1388-621).

<sup>65</sup> For a discussion of the scoring of the automatic continuing resolution provisions in H.R. 853 (106<sup>th</sup> Cong.), see H.Rept. 106-198, part 2, pp. 142-143 and H.Rept. 106-198, part 3, pp. 108-109, and in S. 558 (106<sup>th</sup> Cong.), see S.Rept. 106-15, pp. 7-9.

To some observers, a shutdown of the federal government is a disproportionate consequence of delays in enacting regular appropriations. They suggest that it would be better to provide for the automatic continuation of current appropriations, allowing the appropriations process to proceed in an orderly, if not timely, fashion. Without the threat of a government shutdown, Congress and the President would be able to enact spending laws without a crisis atmosphere.

Proponents of an automatic continuing resolution also point to the costs of a federal government shutdown. These costs include not only the direct costs to the government of a shutdown, but also pay for federal workers during the period of the shutdown, which has been customary even though work is not performed. It also includes less direct costs, such as the costs to beneficiaries of federal programs whose benefits might be delayed, and private sector entities whose business with the government is disrupted.

Opponents of an automatic continuing resolution counter by suggesting that an automatic funding mechanism would be a strong disincentive for lawmakers to reach an agreement on new appropriations. They assert that, while a government shutdown is an undesirable outcome, it provides all sides with an incentive to reach agreement. Therefore, by eliminating the threat of a shutdown, an automatic continuing resolution could undercut that incentive, and budget agreement might be more difficult to achieve.

Opponents also argue that by providing a guarantee for a level of funding in the absence of new legislation, an automatic continuing resolution could provide an advantage in negotiations to those who are opposed to the proposed new level of spending, and thus, an incentive not to reach agreement. In such a situation, the level provided for by the automatic continuing resolution would be a critical issue. A level of 98% or 100% of the previous year's funding level could be seen by some as providing adequate funding, leaving little incentive to negotiate. Proposals to use the President's proposal as the fallback level could provide little incentive for the President to negotiate the level of appropriations. This, opponents argue, would undermine Congress's constitutional responsibility to wield the power of the purse since it negates their ability to exercise deliberate choice in making appropriations.

## **Legislative History**

Although the idea of an automatic continuing resolution has been discussed for a number of years, it has received formal consideration by Congress on only a few occasions.

In the 105<sup>th</sup> Congress, a proposal was considered in both the House and Senate in conjunction with a supplemental appropriations measure for FY1997 (S. 672). In that case, the proposal would have provided for an automatic continuation of appropriations, if necessary, for FY1998, but would have had no effect beyond that year. The proposal, as originally formulated, would have continued funding in FY1998 at 98% of the FY1997 level. An amendment was offered during Senate consideration that would have struck the provision from the bill on May 7, 1997. The provision was subsequently modified by unanimous consent to continue funding

at 100% of the FY1997 level. On May 8, the amendment was tabled by a vote of 55-45, and the provision was retained in the bill.<sup>66</sup>

In the House, a provision identical to the Senate-passed version was offered as an amendment to the House version of the FY1997 supplemental appropriation bill (H.R. 1469). The amendment was adopted by a vote of 227-197 on May 15, 1997.<sup>67</sup> Accordingly, the provision was included in the bill when it was sent to President Clinton, however, the bill was vetoed on June 7, 1997. Among the reasons cited by the President in his veto message was that the funding level that would be provided in FY1998 under the automatic continuing resolution provision was below the level of funding for FY1998 already agreed to by the President and Congress. A subsequent supplemental appropriations measure was later enacted into law without the continuing appropriations provision.

In the 106<sup>th</sup> Congress, the Senate considered a number of possible budget process reforms. On January 19, 1999, S. 93, The Budget Enforcement Act of 1999, was introduced by Senator Pete V. Domenici, and referred to the Committee on Governmental Affairs and the Committee on the Budget, jointly, pursuant to the order of August 4, 1977. The two committees held a joint hearing on budget process reform on January 27, 1999, and the Governmental Affairs Committee reported the automatic continuing resolution provision in Title IV of S. 93 separately as S. 558, the Government Shutdown Prevention Act (S. Rept. 106-15). S. 558 would have provided continuing appropriations during FY2000 and FY2001 at the lower of the level requested in the President's budget or the prior-year level. The Senate took no further action on the proposal in the 106<sup>th</sup> Congress.

In the House, H.R. 853, The Comprehensive Budget Process Act of 1999, was introduced by Representatives Jim Nussle and Benjamin Cardin on February 25, 1999, and referred to the Committee on the Budget.<sup>68</sup> It was also referred to the Committee on Rules and the Committee on Appropriations for consideration of provisions within their respective jurisdictions. Subtitle D of Title VI, providing for a permanent automatic continuing resolution tied to the prior-year level of funding, was referred to the Committee on Appropriations. Hearings on the bill were held by the Rules Committee on May 12 and 13, 1999, and the Budget Committee on May 20, 1999. The bill was subsequently reported (amended) adversely by the Appropriations Committee (H.Rept. 106-198, part 1), and ordered reported (amended) by the Budget Committee (H.Rept. 106-198, part 2), and the Rules Committee (H.Rept. 106-198, part 3).

The adverse report of the Appropriations Committee recommended that the automatic continuing resolution provision be dropped from the bill. As reported

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<sup>66</sup> See vote no. 61 in the *Congressional Record*, daily edition, vol. 143, May 8, 1997, p. S4172.

<sup>67</sup> See vote no. 134 in the *Congressional Record*, daily edition, vol. 143, May 15, 1997, p. H2761.

<sup>68</sup> For a more comprehensive discussion of H.R. 853 and its consideration, see CRS Report RL30236, *H.R. 853, The Comprehensive Budget Process Reform Act: Summary of Provisions*, by James V. Saturno.



from the Committees on the Budget and Rules, the provision was modified to exclude funding for one-time increases in response to emergencies from calculations of the prior-year level. H.R. 853 was subsequently considered by the House under the terms of H.Res. 499 (H.Rept. 106-613). This special rule provided for consideration of a base text that did not include a provision for an automatic continuing resolution, but allowed for one to be offered as an amendment. On May 16, 2000, the amendment providing for an automatic continuing resolution was rejected 173-236.<sup>69</sup>

## Biennial Budgeting

One of the chief congressional complaints about the budget process in recent years has been the amount of time it requires. Despite the perceived or actual permanence of much federal spending, the process of formulating, enacting, and executing budgets has remained characteristically annual. This annual budget cycle poses a dilemma for Congress. On the one hand, annual review of spending legislation can afford Congress the opportunity to maximize its influence concerning the operation of various programs and policies. On the other hand, annual action on budgetary matters consumes a significant amount of Congress's time, resulting in a desire by some Members to reduce the number or frequency of budget measures that need to be considered. One possible reform that has been proposed to accomplish this is to change the budget cycle to 2 years from one year.<sup>70</sup>

### Background

The efficient operation of an annual budget cycle is, in many ways, dependent on the timely enactment of budgetary legislation. Consideration of budget questions in the form of concurrent resolutions on the budget, authorization measures, regular appropriations, supplemental appropriations, continuing resolutions, public debt legislation, revenue measures, and reconciliation bills are often closely linked so that delays in consideration of one measure will have an impact on several other budgetary measures. One consequence of this is that budgetary legislation, particularly final action on regular appropriations measures, has significantly contributed to the need for extended congressional sessions. As shown in **Table 3**, final action in recent years on the last regular appropriations bill (either separately or as part of an omnibus measure) has occurred an average of 75 days after the start of the fiscal year on October 1. Considering budgetary legislation with a duration of 2 years might be one way to reduce the likelihood that Congress would need to endure extended sessions as frequently.

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<sup>69</sup> See vote no. 187 in the *Congressional Record*, daily edition, vol. 146, May 16, 2000, p. H3143.

<sup>70</sup> For more information on biennial budgeting, see CRS Report RL30550, *Biennial Budgeting: Issues and Options*, by James V. Saturno.

**Table 3. Dates of Enactment of Last Regular Appropriations Legislation, FY1996-FY2002**

Fiscal Year	Public Law	Date of Enactment	Days After October 1
1996	104-134	April 26, 1996	209
1997	104-208	September 30, 1996	0
1998	105-118 105-119	November 26, 1997	57
1999	105-277	October 21, 1998	21
2000	106-113	November 29, 1999	60
2001	106-553 106-554	December 21, 2000	81
2002	107-115 107-116 107-117	January 10, 2002	102

**Source:** Calendars of the House of Representatives.

One consistent source of support for biennial budgeting has been the presidency. The administrations of the past four Presidents have all supported the idea of biennial budgeting.<sup>71</sup> One of the most visible examples of this occurred during the Clinton Administration. The 1993 report of the National Performance Review (the Gore report) noted, “Considerable time could be saved—and used more effectively—in both the executive and legislative branches of government if budgets and appropriations were moved to a biennial cycle.”<sup>72</sup>

### Options and Discussion

Because budgeting for the federal government encompasses a number of processes, biennial budgeting can have several meanings. Biennial budgeting can involve 2-year budget resolutions, 2-year appropriations, and multiyear authorizations. In addition, biennial budget proposals typically require that executive branch planning and performance reviews be revised so that they be based on a 2-year cycle.

Typically, biennial budgeting proposals, such as H.R. 981 (107<sup>th</sup> Congress, the Budget Responsibility and Efficiency Act of 2001), include all three aspects of

<sup>71</sup> Most recently, the Administration of George W. Bush made biennial budgeting a part of its initial budget proposals. *A Blueprint for New Beginnings* (Washington: GPO, 2001), pp. 171, 174.

<sup>72</sup> U.S. Office of the Vice President, *Creating a Government That Works Better and Costs Less: Mission-Driven, Results-Oriented Budgeting*, Accompanying Report of the National Performance Review (Washington: GPO, 1993), p. 59.

congressional budgeting, although proposals embracing only one or two are possible options. For example, the biennial budgeting component of a reform proposal reported by the Senate Rules and Administration Committee in 1994 (S. 1824, 103<sup>rd</sup> Congress, the Legislative Reorganization Act of 1994) included 2-year budget resolutions and multiyear authorizations, but not 2-year appropriations. Another significant option concerns the period for which money will be appropriated. One option would be to retain the current system of fiscal years, and enact budgetary legislation allocated between two one-year periods. Alternately, biennial appropriations could provide funding for the entire 2-year fiscal period, increasing flexibility for apportioning money over the course of the biennium.

Advocates of biennial budgeting feel that reducing the number of times that Congress has to consider budget questions will likewise reduce the amount of time consumed by the process. Supporters project that the benefits of a 2-year cycle would include more time for Congress to conduct agency and program oversight, and more time for budget planning within Congress, as well as better long-range planning by federal agencies and by state and local governments.

Proposals to convert the federal budget process to a 2-year cycle are also favored by some who believe that a 2-year cycle provides greater flexibility with regard to deadlines. Without the pressure to enact budgetary legislation every year, there would be greater time available for making decisions within the budget cycle, and more efficient coordination of budgetary decisions. This, they assert, would result in fewer delays and more timely enactment of necessary legislation.

Supporters also point to the multiyear nature of the summit agreements between Congress and the President that have been a part of the budget process for more than a decade as evidence of the efficacy of multiyear budgeting, and as a major factor in recent years for promoting more efficient consideration of budgetary legislation.

Critics of biennial budgeting have countered by arguing that some of the projected benefits could prove to be illusory. Reducing the number of times that Congress considers budget matters, they suggest, may only raise the stakes, and thereby heighten the possibility for conflict and increased delay. In addition, enacting a budget resolution and spending legislation every other year could be effective in reducing congressional workload or aiding longer-term planning only in the second year of the cycle. With only a limited ability to anticipate future conditions, critics argue that a 2-year cycle could require Congress to choose between allowing the President greater latitude for making budgetary adjustments, or engaging in mid-cycle corrections to a degree that could nullify any anticipated time savings or planning advantages. Furthermore, they argue that annual review of appropriations requests is an important part of oversight that would be lost under a biennial budget, with no guarantee that a separate oversight session would be effective.

## Legislative History

Almost from the time that the Congressional Budget Act was enacted in 1974, budget process reform has been a topic of congressional interest, and biennial budgeting was discussed at least as far back as the 95<sup>th</sup> Congress (1977-1978).<sup>73</sup> Hearings on the subject of budget process reform have often included testimony concerning biennial budgeting. In addition, on several occasions both the House and the Senate have conducted hearings specifically on the topic of biennial budgeting.<sup>74</sup> In addition to hearings, congressional interest has been demonstrated by survey,<sup>75</sup> and by cosponsorship of those proposals that have been introduced.<sup>76</sup>

In the House, jurisdiction over budget process reform generally is currently shared by the Committees on Rules and the Budget. Both have considered the issue of biennial budgeting. During the 106<sup>th</sup> Congress, the House Committee on Rules conducted three days of hearings on the subject of biennial budgeting.<sup>77</sup> The House subsequently considered a biennial budget proposal in the form of an amendment during consideration of H.R. 853, the Comprehensive Budget Process Reform Act.<sup>78</sup> On May 16, 2000, the amendment providing for a biennial budget was rejected, 201-217.<sup>79</sup>

In the 107<sup>th</sup> Congress, a biennial budgeting proposal was reported and placed on the Union Calendar for the first time. On March 13, 2001, H.R. 981, The Budget Responsibility and Efficiency Act, was introduced in the House by Representative

<sup>73</sup> For a more detailed discussion of earlier consideration of biennial budgeting, see U.S. Congress, Senate Committee on Rules and Administration, *Improving the Operation of the Legislative Branch of the Federal Government, and for Other Purposes*, report to accompany S. 1824, 103<sup>rd</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 103-297 (Washington: GPO, 1994), pp. 10-14.

<sup>74</sup> Printed hearings specifically addressing the issue of biennial budgeting include: U.S. Congress, House Committee on Government Operations, *The Vice President's National Performance Review—Recommending A Biennial Budget Process*, hearings, 103<sup>rd</sup> Cong., 1<sup>st</sup> sess., Oct. 7, 1993 (Washington: GPO, 1994); and U.S. Congress, Senate Committee on Governmental Affairs, *S. 261—Biennial Budgeting and Appropriations Act*, hearings, 105<sup>th</sup> Cong., 1<sup>st</sup> sess., Apr. 23, 1997 (Washington: GPO, 1997).

<sup>75</sup> For example, 85% of Representatives and 87.5% of Senators responding to a 1987 survey indicated that they agreed or strongly agreed with the idea of appropriating on a 2-year schedule. *Congress Speaks—A Survey of the 100<sup>th</sup> Congress* (Washington: Center for Responsive Politics, 1988), pp. 34.

<sup>76</sup> For example, H.Res. 396 (106<sup>th</sup> Congress), a resolution expressing the sense of the House that a biennial budgeting bill should be enacted, was introduced on Nov. 18, 1999, with 245 cosponsors.

<sup>77</sup> U.S. Congress, House Committee on Rules, *Biennial Budgeting*, hearings, 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., Feb. 16, Mar. 10, and 16, 2000 (Washington: GPO, 2000).

<sup>78</sup> CRS Report RL30236, *H.R. 853, The Comprehensive Budget Process Reform Act: Summary of Provisions*, by James V. Saturno.

<sup>79</sup> See vote no. 186 in the *Congressional Record*, daily edition, vol. 146, May 16, 2000, p. H3127.

Charles F. Bass, and referred to the Committee on the Budget for a period ending not later than April 13, 2001, and in addition to the Committee on Rules and the Committee on Government Reform for a period to be determined subsequently by the Speaker. The period of the referrals was extended on several occasions and the measure was reported with an amendment by the Committee on the Budget on September 5, 2001 (H.Rept. 107-200, part 1). Rather than put the federal budget on a 2-year cycle, the committee amendment substituted a proposal for the creation of a Commission on Federal Budget Concepts that would evaluate and make recommendations on a number of budget process issues. The Committee on Rules subsequently reported the measure on November 14, 2001 (H.Rept. 107-200, part 2), and the Committee on Government reform was discharged from further consideration on the same day. As reported by the Committee on Rules, H.R. 981 included 2-year budget resolutions, 2-year appropriations, and multiyear authorizations.

In the Senate, jurisdiction over the budget process is shared by the Committees on Governmental Affairs and the Budget under the order of August 4, 1977, which provides that if one committee reports a measure, the other has 30 days to report or be discharged from further consideration. Proposals for a 2-year budget cycle have previously been reported by the Governmental Affairs Committee in 1988 (S. 2478, S.Rept. 100-499), 1990 (S. 29, S.Rept. 101-254), and 1997 (S. 261, S.Rept. 105-72). All three of these proposals took a comprehensive approach to biennial budgeting, and included 2-year budget resolutions, 2-year appropriations, and multiyear authorizations.

Also, in 1993, both the Senate and House members of the Joint Committee on the Organization of Congress included proposals for a 2-year budget cycle in their recommendations to their respective chambers (S.Rept. 103-215, vol. 1, and H.Rept. 103-413, vol. 1). In the Senate, these recommendations were subsequently introduced as S. 1824, referred to the Committee on Rules and Administration, and reported in 1994 (S.Rept. 103-297). As noted above, in contrast to the comprehensive approach to biennial budgeting taken most biennial budgeting proposals, S. 1824, as reported, included 2-year budget resolutions and multiyear authorizations, but not 2-year appropriations.

The most recent biennial budgeting measure to be reported in the Senate is S. 92 (106<sup>th</sup> Congress). On January 19, 1999, two bills were introduced by Senator Pete V. Domenici including biennial budgeting provisions: S. 93, The Budget Enforcement Act of 1999, and S. 92, The Biennial Budgeting and Appropriations Act. Both were referred to the Committee on Governmental Affairs and the Committee on the Budget, jointly. The two committees held a joint hearing on budget process reform on January 27, 1999, including the subject of biennial budgeting. S. 92 was subsequently considered by the Committee on Governmental Affairs on March 4, 1999, and ordered reported with an amendment (a complete substitute making a number of technical corrections). A written report was filed on March 10, 1999 (S.Rept. 106-12). The Senate took no further action on the proposal in the 106<sup>th</sup> Congress.

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